

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

ASHRAF AL SAFOO,
a/k/a Abu Al'-Abbas Al-Iraqi,
a/k/a Abu Shanab,
a/k/a Abbusi

No. 18 CR 696

Hon. John Robert Blakey

JOINT PRE-TRIAL MEMORANDUM

The United States of America, by and through its attorney, JOHN R. LAUSCH, JR., United States Attorney for the Northern District of Illinois, and defendant ASHRAF AL SAFOO, through his attorneys THOMAS ANTHONY DURKIN and JOSHUA G. HERMAN, as follows hereby respectfully submits the Pre-Trial Memorandum.

1. Trial Attorneys

The government will be represented by Assistant United States Attorneys Barry Jonas and Melody Wells, and Department of Justice Trial Attorney Alexandra Hughes.

The defendant will be represented by Thomas A. Durkin and Joshua G. Herman

2. Case Statement

Defendant Ashraf al Safoo has been charged with: conspiracy to provide material support, specifically services, to the foreign terrorist organization, ISIS,

through his participation in the Khattab Media Foundation; conspiracy to knowingly and willfully transmit threats in interstate commerce; conspiracy to access a protected computer without authorization; accessing a protected computer without authorization; providing services to ISIS through accessing a protected computer; and providing material support to ISIS, specifically money. The defendant has pled not guilty to the charges.

3. Trial Length

As described below, the parties expect to agree on a number of stipulations. Based on that expectation, the parties anticipate the trial lasting approximately two weeks.

4. Agreed Exhibits and Factual Stipulations

The parties are currently discussing the government's proposed testimonial stipulations and will submit stipulations once finalized. The proposed stipulations primarily apply to business records, the search of electronic devices, and translations.

The government anticipates presenting, in an organized manner, a large volume of exhibits. On October 28, 2021, the government made available to the defense the majority of the anticipated exhibits and will provide the Court with a list of the agreed exhibits once finalized. The defense is currently reviewing the government's exhibits. The defense anticipates that many of its potential exhibits will be included in the exhibits identified by the government.

5. Witnesses

The government anticipates calling the following witnesses:

- 1) Aaron Zelin – expert witness
- 2) FBI Online Covert Employee (“OCE”)
- 3) Yasir al Anzi
- 4) A representative of Twitter
- 5) Austin Varga – FBI Special Agent
- 6) Briahna Winter – FBI employee

If stipulations cannot be agreed upon, the government may call the following witnesses:

- 1) A representative(s) of the Government of Sweden
- 2) Ryan Rainey - Regional Computer Forensic Lab
- 3) A representative of SITE
- 4) A custodian of records from Microsoft
- 5) An FBI linguist
- 6) Multiple FBI agents regarding items found during the execution of search warrants.

At this point, the defense may or may not call the following witnesses:

- 1) Ashraf Al Safoo

The defense is continuing to investigate and contact Iraqi witness(es) related to government witness Yasir al Anzi. Many of these witnesses have been identified in defense pretrial pleadings related to the Rule 15 issues.

6. Exhibit List

Attached to this memorandum is the government's preliminary exhibit list. Per the Court's order (R. 300), the government will provide marked exhibits to the defendant by November 19, 2021, and a flash drive with the exhibits to the Court by December 6, 2021, at 9:30 a.m. As noted above, the defense is currently reviewing the government's exhibit list and anticipates that many of its exhibits will be encompassed in the government's exhibits.

7. Motions in Limine

a) The government may file, at the request of Twitter, a Motion in *Limine* requesting certain protective measures regarding Twitter's proprietary information.

b) Although not a Motion in *Limine*, the government anticipates filing a Motion for a Protective Order pertaining to the testimony of the FBI OCE. This motion will consist of an unclassified motion and a classified addendum.

c) The defense may file a Motion in *Limine* regarding the admission of the hard drive seized by Swedish authorities that the government has identified as "Abuzulaikha Hard Drive," Exhibit 800. The defense may also file a Motion in *Limine* concerning the admission of purported co-conspirator statements, pending the Court's ruling on the government's forthcoming *Santiago* proffer. The defense is investigating other potential Motions in *Limine* based on the ongoing review of the government's recently disclosed preliminary exhibit list.

8. Jury Selection Questions

Not applicable.

9) Proposed Instructions

The parties propose the following jury instructions from the Seventh Circuit

Pattern Instructions:¹

4.09 Attempt

4.10 Definition of Knowingly

5.08(B) Conspiracy – No Overt Act Required (Count One)

5.08(A) Conspiracy – Overt Act Required (Counts Two & Three)

5.09 Conspiracy – Definition of Conspiracy (Counts One, Two & Three)

5.10 Conspiracy – Membership in Conspiracy (Counts One, Two & Three)

18 U.S.C. § 1030(a)(2)(C) – Obtaining Information by Unauthorized Access of
a Computer – Elements (Counts Four, Six, Eight & Ten)

18 U.S.C. § 1030(e)(1) – Definition of “Computer” (Counts Four, Six, Eight &
Ten)

18 U.S.C. § 1030(e)(2) – Definition of “Protected Computer” (Counts Four, Six,
Eight & Ten)

¹ Because this is a bench trial, the parties have focused on the instructions that pertain to the elements of the offenses.

In addition to the proposed pattern jury instructions, the parties propose the attached instructions that pertain specifically to Counts Five, Seven, Nine, Eleven and Twelve. A verdict form is also attached.

The parties may wish to file additional proposed instructions at a later date.

Respectfully submitted,
JOHN R. LAUSCH, JR.
United States Attorney

By: /s/Barry Jonas
BARRY JONAS
MELODY WELLS
Assistant United States Attorneys
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604

ALEXANDRA HUGHES
Trial Attorney
Department of Justice
National Security Division
950 Pennsylvania Ave.
Washington, D.C.

/s/Thomas Anthony Durkin
THOMAS ANTHONY DURKIN
Durkin & Roberts
The Rookery Building
209 S. LaSalle St., Suite 950
Chicago, IL 60604
Attorney for Defendant

/s/Joshua G. Herman
JOSHUA G. HERMAN
Law Office of Joshua G. Herman
53 West Jackson Blvd., Suite 404
Chicago, IL 60604
Attorney for Defendant

Dated: November 1, 2021